Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
A la Carte and Themed Tier Programming	)	MB Docket No. 04-207
and Pricing Options For Programming	)	
Distribution on Cable Television and	)	
Direct Broadcast Satellite Systems	)	

To: The Commission

COMMENTS OF NBC UNIVERSAL, INC.

Today's typical viewer has a choice among hundreds of channels, including all local stations and scores of national cable networks. Compared to the decades when the average household had a mere handful of home video programming choices, today's wealth of programming options represents phenomenal progress about which Congress and the Commission should be justly proud. Indeed, with the onset of digital television, the U.S. consumer soon should have access to the greatest diversity of video programming ever available, including not only more regional, national and international programming, but, through digital multicast offerings, more programming from their local television stations.

Those who would risk this success by changing the current system to require multichannel video programming distributors ("MVPDs") to offer individual channels on an *a la carte* basis thus bear a heavy burden. Based on the experience of NBC Universal, Inc. ("NBC"), which owns and operates several cable networks (USA, CNBC, MSNBC, Bravo, SciFi Channel, and Trio) as well as the NBC and Telemundo broadcast networks, we do not believe that a case can be made for a federal *a la carte* mandate. To the contrary, such disruptive federal intervention is likely to have substantial negative consequences for the public.

Mandated *A La Carte* Pricing Is Likely To Reduce Programming Diversity

Since the Commission's inception, its fundamental goal has been to preserve the programming diversity available to the consumer. 1/ In strictly limited circumstances, that goal has been deemed a sufficient reason to justify government intervention in the video marketplace. 2/ But an *a la carte* regime cannot claim such a justification. Any *a la carte* mandate is far more likely to limit, rather than expand, the diversity of quality programming available to consumers for at least the following reasons:

- An *a la carte* mandate significantly will increase the risks inherently associated with the development of innovative programming.
- An *a la carte* mandate will introduce new transaction inefficiencies and costs for consumers, MVPDs and programmers alike, resulting in increased costs for the same programming.
- An *a la carte* mandate will reduce the ability of programmers and MVPDs to defray costs through means other than higher subscriber rates, such as advertising.

Each of these effects stems from the realities of today's video industry. Because an *a la carte* system requires many potential viewers to add a network before they can add a program, it will make it much more difficult for viewers to respond quickly enough to register their preferences for innovative programming. This unavoidable inefficiency and delay in response time will seriously inhibit the creation of innovative and diverse programming for several reasons.

1/ *See, e.g.*, *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 663 (1994) (noting that "the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public"); *Application of General Motors Corp., et al.*, Memorandum Opinion & Order, 19 FCC Rcd 473 (¶ 362) (2004) (*"DirecTV Order"*) (stating that Commission's "primary objective" is to "maximize the variety, quality and innovation" of programming available to consumers).

2/ *See, e.g.*, 47 U.S.C. § 614 (requiring mandatory carriage of local stations by cable operators to preserve local programming options for all consumers); *DirecTV Order*, 19 FCC Rcd at ¶ 362-66 (concluding that Commission must intervene to protect MVPDs and preserve available programming for consumers).

First, in today's highly competitive and diverse video marketplace, networks have less and less time to try out new programming. The financial pressures facing all networks mean that newly-launched programs are routinely canceled within weeks if they do not prove themselves. 3/

Second, to have any chance of proving itself quickly, a new show must have access to a large potential audience base immediately in order to maximize the chances that it will be sampled and viewed and find a loyal, recurring audience base. The current system makes such sampling possible because channels with modest measured actual viewership nevertheless have much bigger potential viewership as a result of their inclusion in a tier. Advertisers clearly value potential viewership – or reach – and are willing to pay premium rates based on a show's potential reach. 4/ In short, the value of a program and channel is a function of both its actual measured viewership as well as its potential for growth through access to a larger potential audience.

Third, in an *a la carte* world each channel's distribution would be dramatically reduced, thereby limiting the ability of any new show to achieve large-scale sampling through any existing channel. As a result, the programmer would need to find a new way – at much greater expense and much less certainty of success – to reach and find an audience. In addition, unless viewers who like the show then take the additional step of adding that channel to their existing line-up, those viewers will not become part of the

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3/ The Commission is well aware of the costs (and the low likelihood of success) of any new program. Based on NBC's own experience, a one-hour drama pilot for a broadcast network often costs upwards of \$3.0 million. Further episodes can cost upward of \$1.6 million apiece. Worse, out of the 250-400 pitches ordered, and out of 8 to 12 pilots ordered, perhaps two survive to air multiple seasons. Further, these costs are increasing. According to a recent Morgan Stanley analysis, NBC's costs for a regular series have risen by approximately 9 percent over the last six seasons even when pilot and abandoned program costs are excluded. Costs for original cable programming are similar: *Monk*, USA's successful original drama, can cost approximately \$1.6 million per episode. *See Broadcasting & Cable*, "What's Hot in Cable," at 16 (October 27, 2003).

4/ *See, e.g., Broadcasting & Cable*, "Cheaper By the Thousand," at 20 (Feb. 4, 2002) ("The bottom line is that advertisers put a premium price on reach; they want to cast as wide a net as possible.")

continuing audience base for that program. Yet there is no evidence that consumers are prepared to register their preferences, and to do so quickly, by modifying their channel subscription selections.

Accordingly, an *a la carte* mandate increases the likelihood that viewers, because of the transaction burdens inherent in an *a la carte* mandate, will lose, or never gain, access to programming that they would prefer to watch. The recent success of the Bravo network is a textbook example of how the current system facilitates the launch of an innovative new program, and how that program might have withered under an *a la carte* mandate. Prior to 2003, Bravo had cable distribution of approximately 69 million households because it was part of basic cable. Thus assured access to a significant potential audience, Bravo was able to risk substantial capital in upgrading its programming with a reasonable chance, if successful, of attracting significant public response. 5/ In light of the typically short window for determining the viability of new programming, a prerequisite for that gamble was that a broad segment of the public would, if they chose, be able to access innovative Bravo fare quickly and with minimal upfront investment.

The result was a show – "*Queer Eye for the Straight Guy*" -- that has become a popular phenomenon. With broad existing access to Bravo, potential viewers became actual viewers in a matter of weeks, increasing Bravo's ratings in primetime by nearly two-thirds. 6/ That immediate support encouraged Bravo to take further steps to develop new programming responsive to these viewers' interests,

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5/ *See Broadcasting & Cable,* "What's Hot in Cable" at 12 (October 27, 2003) (noting that NBC, which just acquired Bravo, invested substantial sums and promotional support into the program in effort to have breakout hit).

6/ For example, during one stretch in July 2003, the series claimed 2.7 million viewers for a single episode, which was more than 63% above the prior week's already record-breaking numbers. *See www.thefutoncritic.com/cgi/gofuton.cgi?action=newswire&id=6100.* Later episodes would exceed 3 million viewers, which are huge numbers for a cable network. *See Broadcasting & Cable*, "What's Hot in Cable" at 12 (October 27, 2003). That sort of immediate consumer access to a new program would be impossible in an *a la carte* world.

as well as to gain additional distribution and more advertising support. 7/ This virtuous cycle – a loop that depends on rapid access to and public support for innovative programming – has transformed Bravo into the fastest-growing ad-supported cable network in prime time. Further, and as an immediate benefit to Bravo's advertising sales, the new viewers caused the median age of the Bravo viewer to drop nearly five years – to 44.9 – and squarely within the most advertiser- targeted 18-49 demographic. In less than a year, "Bravo skyrocketed from a niche cultural channel to a big-time cultural phenomenon." 8/

In an *a la carte* world, the ending to this story might have been quite different. If Bravo's distribution were substantially reduced from its current levels, the show would have been accessible by far fewer viewers. This in turn would have led to much lower levels of sampling. Furthermore, unless those who liked the show then decided quickly to add Bravo to their lineups, the conversion of potential viewers to actual viewers might have taken months rather than weeks – or might not have happened at nearly the same levels. Without immediate, positive feedback, Bravo may have cancelled this innovative programming before it had a chance to find an audience.

A Government Mandated *A La Carte* Regime May Increase Cable Rates

Cable operators and networks have relied on two revenue streams: i) advertising revenues and ii) monthly subscriber fees. For a cable network, the more actual (and potential) viewers, the easier it is for the cable network to attract advertisers. 9/ For a cable operator, there is an added dimension beyond the obvious benefits of increased ratings: the more cable networks that a cable operator delivers to all of its

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7/ Prior to *Queer Eye*'s debut in Summer 2003, Bravo, through a renewed distribution push following NBC's acquisition of the network, had added roughly 1.4 million households. In the six months following the debut of *Queer Eye*, Bravo more than doubled that number – for a total of 5 million new households – in large part as a result of unimpeded consumer sampling of its exciting new programming. *See www.nbccableinfo.com/insidenbccable/pdf/bravo/research/2003milestones.pdf.*

8/ *See* http://www.adage.com/cableguide/2004/06.html.

9/ *Broadcasting & Cable*, "What's Hot in Cable" at 12 (October 27, 2003) ("The surest measure of a hit [cable] reality show is ratings. Also telling is advertiser support and possibilities for sponsorships . . . .")

subscribers, the more advertising minutes – "ad avails" -- the cable operator or programmer can sell. A cable operator that delivers 100 channels to its subscribers can have 900 minutes of prime time ad minutes per day (or roughly 30 times more than the typical Top-4 broadcast affiliate).

These resultant advertising revenues are not trivial. Last year's GAO report concluded that nearly half of cable network revenues result from advertising. 10/ Likewise, recent estimates have concluded that cable operators have been substantially increasing their share of local television advertising revenues, and, by 2005, are projected to take roughly 16 percent of all local television advertising, which is nearly double their 1994 share of that revenue. 11/

Although proponents claim that *a la carte* would lower consumers' rates, nowhere has it been demonstrated that government-mandated *a la carte* delivery would reduce subscribers' monthly MVPD bills. 12/ To the contrary, in an *a la carte* world, ad-supported networks, like USA or Bravo, likely would have to offset lost advertising and subscriber revenues resulting from the loss of potential viewers with higher subscription fees and advertising prices. In short, the principal claimed benefit of an *a la carte* mandate, a substantial reduction in consumer fees, is very much in doubt.

A La Carte **Risks Successful Federal Measures to Preserve Programming Diversity**

Past congressional action confirms the wisdom of offering broad tiers to provide better consumer value, more program diversity and more vibrant competition. For more than a decade, Congress has

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10/ Governmental Accounting Office, *Telecommunications: Subscriber Rates and Competition in the Cable Television Industry* at 34-35 (released October 24, 2003) ("GAO Report").

11/ *See* Veronis Suhler & Associates, as cited by Broadcasting & Cable (rel. June 17, 2002)).

12/ *See* GAO Report at 26 (concluding that "subscribers' monthly cable bills would not necessarily decline under an *a la carte* system").

specified that all free, over the air, local television broadcast signals be transmitted, in their entirety and without material degradation, to all cable subscribers in their respective television markets. 13/

The result of that policy has been an unqualified success for programming diversity and the consumer. The transmission of a complete slate of local channels has ensured that local competition among television stations has been preserved, as every free, local, over-the-air station is assured the same potential audience among local MVPD subscribers as every other local station. 14/ It also has ensured that no local station can be subject to distortions resulting from individual pricing decisions by a local operator. 15/

13/ *See* 47 U.S.C. § 534(b)(7) ("Signals carried in fulfillment of the requirements of this section *shall be provided* to every subscriber of a cable system. Such signals *shall be viewable* via cable on *all* television receivers of a subscriber which are connected to a cable system by a cable operator or for which a cable provides a connection.") (Emphasis added.) The plain language of this section underscores that it is not enough for a cable system to offer a local station to subscribers; the mandate requires that all local stations that elect mandatory carriage affirmatively "shall be provided" to all subscribers. Accordingly, under current law, carriage of local broadcast stations cannot be on an *a la carte* basis.

14/ *See, e.g.*, *id.*; 47 U.S.C. § 338 (a)(1) (establishing "carry one, carry all" mandate for local-into-local DBS carriage). On a related point, retransmission consent negotiations between broadcasters and MVPDs likewise should not be an issue of Commission concern. That cable operators may choose to agree to carry broadcaster-affiliated cable networks in lieu of license fees for over-the-air programming only furthers the federal goal of maximizing available programming options for consumers. Frankly, it is impossible to explain how an MVPD's receipt of programming from local broadcast stations for *no* monthly fee increases cable rates beyond what they would be if local stations charged, like cable networks, a monthly subscriber fee for such undeniably valuable and highly rated programming. Unsurprisingly, there is no reliable evidence that such retransmission agreements have resulted in higher cable rates for consumers. To the contrary, the GAO Report concluded that station-affiliated cable networks that receive carriage in connection with retransmission consent negotiations do not exceed customary fees for similar programming. *See* GAO Report at 29 (concluding that "cable networks that have an ownership affiliation with a broadcaster did not have, on average, higher license fees" than nonaffiliated networks).

15/ Moreover, this congressional mandate does not bar cable operators from offering other services desired by consumers. Mandatory carriage of all local television stations occupies a minimal fraction of the capacity of today's cable system. Even in the nation's largest television markets like Los Angeles, mandatory carriage of all local stations requires only about 20 percent of the capacity of the typical 750 MHz cable system. When these cable systems and broadcast stations have fully transitioned to digital, the bundling of all local broadcast stations will take up only about half that.

What is telling about this example is that its basic premise is a rejection of the *a la carte* model. A key justification for mandatory carriage – since vindicated by actual experience -- was that it would increase program diversity readily available to consumers by adding a distinct group of channels not within an MVPD's ultimate control. By contrast, there is no evidence to suggest that an *a la carte* mandate will increase programming diversity readily available to consumers. To the contrary, the success of mandatory carriage of local stations is just one more reason that the federal government should not compel *a la carte* with regard to any sort of programming. As the aggregation of local stations has preserved and promoted local programming diversity, so too has the MVPD decision to offer broad tiers of programming promoted diversity on a national basis. The federal government should not disrupt that success.

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For all the foregoing reasons, NBC urges the Commission not to adopt or pursue an *a la carte* mandate for television programming.

Respectfully submitted,

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